



# GRIC

## **Foundations for Prosecution Conference**

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### **MOTION PRACTICE: DRAFTING PROACTIVE MOTIONS**

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# Proactive Pre-trial Motion Practice

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# Disclaimers

- My practice is in Arizona state courts
- Skipping the very basics
  - Prior felony convictions
  - Rule 609
- Every case is different

# Two Main Goals

- Get things in
- Keep things out

# Procedural Considerations

- Motion deadlines
- Format – MIL or “Motion to Preclude”?
- Format – notice of intent to introduce evidence?
- Oral or written?
- Goals
  - 1. Make it easy for the judge to rule in your favor
  - 2. Appeals-proof rulings

# Hypo #1

- Defendant John Smith is charged with transporting dangerous drugs (methamphetamine) for sale. He was stopped for speeding (2 mph over the limit). He “looked shifty” to the stop officer, and was driving an overly clean car. The stop officer had him get out of the car, and Smith made the spontaneous statement that there was dope in the car. The stop officer asked for permission to search the car, but Smith said no. Stop officer does PC search and finds five pounds of meth.
- What do you want **IN**?
- What do you want **OUT**?

# Getting things in - examples

- 404 (b) and (c)
- Expert testimony (Daubert, drug courier)
- Law enforcement opinions
- Hearsay exceptions
  - 911 calls
  - Excited utterances
  - Statements made for medical diagnosis and treatment

# Hypo #2

- Defendant John Smith is charged with a variety of crimes relating to the sexual abuse of his daughter. Your victim is an undocumented immigrant. Smith engaged in a pattern of grooming behavior and threats over several years. Smith denied to the police. Your victim gave a detailed description of the abuse to a forensic interviewer, but you are afraid that she will not be forthcoming on the stand.
- What do you want **IN**?
- What do you want **OUT**?



# Keeping things out - examples

- Irrelevant evidence
  - Beliefs of witnesses regarding guilt
  - Beliefs of witnesses regarding other witnesses
- Self-serving hearsay
- Character evidence
- Information regarding penalty
- Rape shield evidence
- Voluntary intoxication
- Third party defense

# Hypo #3

- Defendant John Smith is charged with residential burglary. Your victim is a drug addict, but will testify, if asked, that she was not impaired at the time of the burglary and she recognizes Smith as the burglar. Smith is a Navy vet. He and his wife live next door to the victim, and his wife knows she is an addict. Smith is prison mandatory after trial, and was drinking the night of the burglary. He invoked to police.
- What do you want **IN**?
- What do you want **OUT**?

# Computer Evidence

- Is it 404?
- Is it intrinsic/evidence of conspiracy?
- Two issues: authenticity and content

# Hypo #4

- Defendant Smith is charged with ten counts of Sexual Exploitation of Minors. On his computer, there are thousands more videos and images that count as SEM material, as well as material that is sexually suggestive, if not illegal. There are also 200 videos of adult pornography. There are inculpatory search terms and torrent files. To police, Smith denied everything and suggested that his former roommate must be responsible. He does not know his roommate's name or any contact information.
- What do you want **IN**?
- What do you want **OUT**?

# Hypo #5

- Defendant Smith is charged with a variety of offenses related to the possession of a number of stolen credit cards. His co-defendant Johnson pled guilty and signed a cooperation agreement. The third defendant also pled guilty, but did not sign a cooperation agreement. She is Smith's wife. The credit cards were located by police during a search warrant they were executing related to a murder case. None of the co-defendants were charged with the murder. Smith admitted to police at the search warrant that he and Johnson had stolen the cards and were using them online and at stores around the valley. He was not under *Miranda* at this time. You believe that Smith's wife intends to implicate Johnson and deny Smith's involvement.
- What do you want **IN**?
- What do you want **OUT**?

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